MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 464 OF 2007

MR. WALTER WILSON SHINDE & ORS.. PETITIONERS

Vs.

CITY SURVEY OFFICER NO. I, NASHIK & ORS. .. RESPONDENTS

Mr. P. B. Shah for petitioners

Mrs. S. S. Bhende, AGP

CORAM: SMT. RANJANA DESAI & SMT. R. S. DALVI,JJ.

DATE: DECEMBER 4, 2007.

P.C.

. The petitioners have challenged the notice dated 30/9/06 issued by the City survey, Nashik No. I, Nashik and order dated 21/4/06 issued by the Commissioner, City Survey Nashik. Shortly stated the grievance of the petitioner is that mutation entries made on 3/11/97, 22/12/97 and 18/9/02 7/12/04 are sought to be changed after ten years and a notice to that effect is issued on 21/4/06. It was followed by another notice dated 30/9/06. According to the petitioners, the respondents are trying to review mutation entries which is not

permissible.

2. We have heard the learned counsel for the petitioners. He inter alia contended that application for review can be made only by the party to the proceedings. That too if the rights of the parties are affected. In this case the application is made by some third parties. He further submitted that application should be made within 90 days. Here cognizance is taken on some oral complaint and that too well beyond the period of 90 days. Such a review is not at all maintainable.

3. Affidavit is filed on behalf of the respondents where contentions raised by the petitioners are denied. At this stage, we do not want to go into the merits of the case because we find from the notice that on two occasions petitioners were called upon to appear before the concerned authority with the documents and submit their explanation. However, the petitioners have not appeared before the concerned authority. Learned counsel for the petitioners, however contended that a reply was tendered by the petitioners. He has shown a copy of the reply with an acknowledgement

to us. Learned AGP, however, states that the said application does not seem to have been received by the proper authority. This is a disputed question on which we do not want to express any opinion.

4. In our opinion, interest of justice would be served if the petitioners appear before the concerned authority i.e. respondent 1 and respondent 1 after giving proper hearing to the petitioners and also after giving an opportunity of hearing to the respondents passes an appropriate order and communicates its decision to the petitioners.

5. We have noticed that the petitioners were protected by interim orders of this court.

6. In the circumstances, the following order, in our opinion, would meet the ends of justice;

. "The petitioners shall appear before the 1st respondent within a period of three weeks from today. They shall, if they so desire submit a written reply.

. The 1st respondent shall give the petitioners an

opportunity of hearing. The 1st respondent shall hear all concerned and pass appropriate order independently and in accordance with law. The 1st respondent shall communicate the order passed by him to the petitioners. If the decision of the 1st respondent is adverse to the petitioners, effect shall not be given to the said decision for a period of three weeks from the date of communication of the said order to the petitioners.

. We make it clear that on the merits of the petition, we have not expressed any opinion. Nothing said by us in this order should be interpreted to mean that we have expressed any opinion on the merits of the case. All contentions raised by both the sides are kept open.

. We also make it clear that Mr. Shah, learned counsel for the petitioners contended that the agreements could be registered at the cost and consequences of the petitioners and that the petitioners are prepared to put necessary conditions in the agreements.

. In our opinion, at this stage no such permission can be granted but we keep even this contention

open.

. The concerned authority shall pass appropriate order as early as possible preferrably within a period of three months from today because the agreements of persons who have purchased the flats have not been registered.

. Petition is disposed of.

JUDGE

JUDGE